

148 FERC ¶ 61,010
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

July 7, 2014

In Reply Refer To:
J.P. Morgan Ventures Energy
Corporation
Mercuria Energy America, Inc.
Docket No. RP14-845-000

J.P. Morgan Ventures Energy Corporation
c/o Bracewell & Giuliani LLP
Attention: Mark K. Lewis
2000 K St. NW
#500
Washington, DC 20006

Mercuria Energy America, Inc.
c/o Cadwalader, Wickersham & Taft LLP
Attention: Gregory K. Lawrence
700 Sixth St. NW
Washington, DC 20001

Dear Messrs. Lewis and Lawrence:

1. On May 7, 2014, J.P. Morgan Ventures Energy Corporation (J.P. Morgan) and Mercuria Energy America, Inc. (Mercuria) (jointly, Petitioners) filed a Joint Petition requesting temporary waivers of the Commission's capacity release regulations and certain other Commission policies for the limited purpose of facilitating a transfer of J.P. Morgan's Gas Marketing Business to Mercuria. Petitioners request that the Commission issue an order on this Joint Petition granting the waivers on or before July 7, 2014. Petitioners request that such waivers be effective immediately upon issuance and remain in effect for 545 days. For the reasons discussed below, and for good cause shown, the Commission grants the requested limited waivers.

2. Petitioners state that the transfer of the J.P. Morgan Gas Marketing Business is part of a larger, integrated world-wide transaction involving the systematic transfer of substantially all of J.P. Morgan's physical and related financial commodities business to Mercuria (Transaction) pursuant to a purchase and sale agreement executed on

March 18, 2014 (the Agreement). In conjunction with this Transaction, J.P. Morgan is seeking to permanently release thirteen firm storage agreements with eight different pipelines, twenty-eight firm transportation agreements with sixteen different pipelines, ninety-five park and loan agreements with fifteen different pipelines, seventy-seven interruptible transportation agreements with fifty-nine different interstate pipelines and twenty transportation, park and loan, and storage agreements with four intrastate pipelines.¹ Petitioners state that Mercuria's assumption of the J.P. Morgan Gas Marketing Business is not an isolated transaction, but is, rather, part of the larger Transaction pursuant to which Mercuria will simultaneously be acquiring different portions of J.P. Morgan's physical commodities businesses. Petitioners assert that granting the limited waivers requested herein is in the public interest. Petitioners state the limited waivers requested herein will facilitate J.P. Morgan's orderly transfer of substantially all of its global commodities business to Mercuria, which will result in J.P. Morgan's exit from the U.S. physical natural gas marketing business.

3. To facilitate the permanent prearranged release of capacity as part of the Agreement, Petitioners request waivers of certain Commission regulations and policies as well as any other waivers or authorizations deemed necessary. Specifically, Petitioners request waiver of the Commission's (1) capacity release regulations set forth in section 284.8 of the Commission's regulations, including the posting and bidding requirements;² (2) restrictions on capacity releases at negotiated rates currently in excess of the applicable Affected Pipelines' maximum rate, or which may become so in the future;³ (3) the Commission's shipper-must-have-title policy; (4) the prohibition against buy/sell arrangements; and (5) the prohibition against tying arrangements to permit the capacity under Jurisdictional Service Agreements to be permanently released, or assigned, from J.P. Morgan to Mercuria. Petitioners request that the waiver remain in effect for a period of 545 days following the date that the Agreement closes (Requested Waiver Period), which Petitioners anticipate will occur in the third quarter of 2014.

4. Petitioners acknowledge that the Requested Waiver Period is longer than previous waiver periods permitted by the Commission, but argue that the unique characteristics of the Transaction warrant the length of the Requested Waiver Period. Petitioners argue that the extended time frame is necessary to permit the release and assignment of the large number of Commission-jurisdictional gas transportation and storage agreements to which J.P. Morgan is a party (over fifty firm agreements), as well as the assignment or novation of the vast number of physical natural gas commodity purchase and sale agreements to which J.P. Morgan is a party, all of which substantially comprise the J.P. Morgan Gas

¹ Petitioners included a list of these agreements as Attachment A to their filing.

² 18 C.F.R. §§ 284.8(c)-(e) (2013).

³ 18 C.F.R. §§ 284.8(b)(2), 284.8(h)(1)(iii) (2013).

Marketing Business. In view of this extended period, they state that they will provide the Commission with a status report regarding the contract transfer and novation process every ninety days after closing of the Agreement. This status report will include notification of any additional jurisdictional service agreements associated with the Transaction that are not included on the list in Appendix A to the petition.

5. Public notice of the joint petition was issued on May 12, 2014. Interventions and protests were due as provided in section 154.210 of the Commission's regulations.⁴ Pursuant to Rule 214,⁵ all timely motions to intervene and any unopposed motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Bobcat Gas Storage (Bobcat), Egan Hub Storage, LLC (Egan Hub) and Steckman Ridge, LP (Steckman Ridge), collectively Commenters, filed motions to intervene and comment. J.P. Morgan filed an answer to Commenters' comments on May 22, 2014.

6. Commenters do not oppose the Waiver Petition with respect to their contracts, except to object that the Petitioners have requested a general waiver of the Commission's capacity release regulations and the applicable tariff provisions implementing them. Commenters request that the Commission clarify in this order that, with respect to waiver of the applicable tariff provisions of their tariffs, the waiver is limited to the posting and bidding requirements in the applicable tariff provisions and does not apply to the capacity release tariff provisions that are not related to posting and bidding.

7. In its answer, Petitioners clarify that they are only seeking waiver of those tariff provisions that are necessary to effectuate the transfer of J.P. Morgan's transportation and storage agreements to Mercuria or its affiliates. Petitioners further state that consistent with Commission policy,⁶ Petitioners are not seeking to require any pipeline to allow a permanent capacity release if that pipeline will not be financially indifferent to the release, and consistent therewith are not seeking waiver of a pipeline's creditworthiness provisions.

⁴ 18 C.F.R. § 154.210 (2013).

⁵ 18 C.F.R. § 385.214 (2013).

⁶ See, e.g., *Rockies Express Pipeline LLC*, 147 FERC ¶ 61,063, at P 5 (2014); *Transcontinental Gas Pipe Line Co.*, 134 FERC ¶ 61,184, at P 6 (2011); *Midcontinent Express Pipeline LLC*, 124 FERC ¶ 61,089, at P 123 (2008); *Texas Eastern Transmission Corp.*, 83 FERC ¶ 61,092, at 61,446-48 (1998); *El Paso Natural Gas Co.*, 61 FERC ¶ 61,333, at 62,311-12 (1992).

8. We have reviewed Petitioners' request for temporary waivers and find that the request is adequately supported and consistent with previous waivers that the Commission has granted to permit the release of capacity under similar circumstances,⁷ particularly when the transfers are a result of various types of corporate restructurings, including corporate mergers and sales of entire business units. Petitioners have also provided the information required for approval of such waivers: (1) identification of the regulations and policies for which waiver is sought; (2) identification of the pipeline service agreements and capacity to be transferred; and (3) description of the overall transaction and its claimed benefits, with sufficient detail to permit the Commission and other interested parties to determine whether granting the requested waivers is in the public interest.⁸

9. Petitioners have adequately addressed Commenters' concerns by clarifying the limited scope of their tariff waiver request. Accordingly, we grant waiver of the relevant tariff provisions only to the extent necessary to effectuate the transfer of J.P. Morgan's transportation and storage agreements to Mercuria or its affiliates, consistent with previous Commission waiver orders.

10. Accordingly, for good cause shown, the Commission grants Petitioners' request for temporary, limited waiver of the Commission's capacity release regulations, including posting and bidding provisions, restrictions on capacity releases at negotiated rates in excess of the maximum rate, the prohibitions on buy/sell and tying arrangements and the shipper-must-have-title requirements. In addition, the Commission grants, to the extent necessary, a temporary and limited waiver of the above-referenced provisions of the pipelines' tariffs so as to facilitate the capacity release transaction.⁹ Further, consistent with Petitioners' proposal, we will grant a waiver period of 545 days, and require Petitioners to provide the Commission with an informational status report every 90 days.

⁷ See, e.g., *Big Sandy Pipeline, LLC*, 141 FERC ¶ 61,151 (2012); *Antero Resources Corp.*, 139 FERC ¶ 61,258 (2012); *Salmon Resources, LTD*, 138 FERC ¶ 61,059 (2012); *Big Sandy Pipeline, LLC*, 136 FERC ¶ 61,130 (2011); *BHP Billiton Petroleum (Fayetteville LLC)*, 135 FERC ¶ 61,088 (2011); *Wisconsin Electric Power Co.*, 131 FERC ¶ 61,104 (2010); *EnergyMark, LLC*, 130 FERC ¶ 61,059 (2010); *Total Gas & Power North America, Inc.*, 131 FERC ¶ 61,023 (2010); *Sequent Energy Mgmt., L.P., et al.*, 129 FERC ¶ 61,188 (2009); *North Baja Pipeline, LLC*, 128 FERC ¶ 61,082 (2009); *Macquarie Cook Energy, LLC*, 126 FERC ¶ 61,160 (2009); *Bear Energy LP*, 123 FERC ¶ 61,219 (2008).

⁸ *Request for Clarification of Policy Regarding Waivers of Applicable Requirements to Facilitate Integrated Transfers of Marketing Businesses*, 127 FERC ¶ 61,106, at P 10 (2009).

⁹ The affected pipelines are listed in Appendix A of Petitioners' application.

The status report shall update the public on the contract transfer and novation process, and note any additional jurisdictional service agreements involved in the Transaction that were not included on list of pertinent agreements set forth in Appendix A of the Petition.

11. In a notice issued in Docket No. RM01-5-000 on November 17, 2011, the Commission stated that it “may not issue an order on reports.” Therefore, Petitioners are advised that future Informational Reports, if not protested, will be treated as informational and the Commission may not issue an order on those reports.

By direction of the Commission.

Kimberly D. Bose,
Secretary.